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SENSITIVE
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STATE FOR L/DL, L/LEI AND EUR/WE, DOJ FOR DOJ/OFL PATRICIA
REEDY, OSD FOR MAGGIE SADOWSKA, NSC FOR TOBIN BRADLEY

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SUBJECT: COUSO CASE: JUDGE REINSTATES CHARGES AGAINST U.S.
SOLDIERS

REF: 08MADRID542

11. (SBU) SUMMARY: May 21 Spanish National Court Judge Santiago Pedraz issued new indictments against three U.S. soldiers in connection with the death in Iraq of Spanish journalist Jose Couso in 2003. The charging document introduces new, recently obtained evidence, including statements from former Minister of Defense Frederico Trillo and former Foreign Minister Ana Palacio. Judge Pedraz argues that the new evidence contradicts the U.S. position that the soldiers were responding to hostile fire when their tank shot at the hotel in Baghdad. Issuance of international arrest warrants is probable. END SUMMARY.

12. (SBU) Background: Jose Couso died in April 2003 when a U.S. tank fired on the Palestine Hotel in Baghdad. In May 2003 the Couso family presented a criminal complaint before the Spanish National Court against members of the Third Infantry Division of the U.S. Army, accusing them of murder and war crimes. The case was dismissed by the Criminal Division of the National Court on May 13, 2008 (reftel). The court agreed with the National Prosecutor's Office that the investigating judge had not presented sufficient evidence to support the allegations. This ruling, however, did not close the case, but rather left open the option for additional evidence to be obtained.

13. (SBU) New Evidence: In the charging document, significantly better drafted than the original complaint according to post's legal advisor, Judge Pedraz provides the following new evidence: expert opinion testimony from a Guardia Civil General on humanitarian law, testimony from former Minister of Defense Trillo, testimony from former Foreign Minister Palacio, additional testimony from three journalists present at the Palestine Hotel the day of the incident, testimony of former U.S. military intelligence officer Adrienne Kinne obtained during a May 13, 2009, interview with the television program "Democracy Now," Spanish military expert opinion on the use of arms and tanks, and aerial photographs of the hotel and surrounding area. Pedraz has not been successful in obtaining permission to travel to Baghdad or the testimony of foreign reporters at the Al Jazeera and Abu Dhabi television buildings in Baghdad also hit the same day allegedly by U.S. fire.

14. (SBU) Allegations: The judge charges the three soldiers with murder and crimes against humanity. In the charging document, Judge Pedraz argues that the accused violated Geneva Convention provisions, failing to use appropriate care in distinguishing between military and civilian targets. He states that based upon his evidence, the U.S. military knew

that the hotel was where many foreign journalists were staying. Pedraz argues that according to other journalists in the hotel at the time, the tank had not come under fire before shooting at the Palestine Hotel. Judge Pedraz also points out that he has not received sufficient information from the USG on the U.S. investigation into the matter.

¶5. (SBU) Comment: The case continues to generate significant media interest. According to post's Spanish legal advisor, the National Prosecutor's Office is likely to appeal the indictment, as it did in 2005, arguing that the evidence is insufficient to support the charges. Judge Pedraz, reportedly close to the Couso family and passionate about the case, may be waiting then for the charges to be confirmed by the Criminal Division of the National Court before issuing arrest warrants. Given the efforts apparently made to present more compelling evidence and legal arguments, however, it is likely that arrest warrants are imminent. This is another subject Washington might wish to raise with National Court Prosecutor Zaragoza during his upcoming visit there.
DUNCAN